"The provision of subjections (1) and (2) shall have affect nothwithstanding any other written law to the contrary"

Since the power of the Public Prosecutor to issue a requisition is governed by subsection (2) we cannot think how it is open to the High Court to invoke any other law to remit down those cases to the courts below.

In view of our opinion, we think that Article 7(1) of the Constitution does not arise at all and the question posed could best be answered in the negative.

For the guidence of courts below, we would restate the matter as follows:

1. Pending cases could still be tried in the Sessions Court unless the Public Prosecutor chooses to have them tried in the High Court by the issue of a requisition under section 41(2).

2. The Public Prosecutor's requisition is valid only in respect of cases of which trials have not yet begun. If trials have already commenced in the Sessions Court, his requisition is invalid and the court therefore should continue to try them. The trial is said to have commenced when evidence has begun to be adduced.

3. If pending cases have been transmitted to the High Court pursuant to Public Prosecutor's requisition, it is not open to High Court to remit them to the courts below by invoking section 417 Criminal Procedure Code, or any other written law. Subsection (3) of section 41 which gives effect to the Public Prosecutor's requisition should prevail, this being a special law.

4. The transmission of pending cases to the High Court is not in violation of Article 7(1) of the Constitution, as the punishment for which the accused is liable remains the same as it was before the amendments. Death penalty is not mandatory for such cases, but only discretionary.

Order accordingly.

Solicitors: *Karpal Singh & Co.; Farid Ariffin & Associates; Kumar & Co.*

BADRUL BIN AHMAD & ORS. v. GOVERNMENT OF MALAYSIA & ORS.

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Syed Agil Barakbah S.C. JJ.) August 14 & December 11, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 75 of 1986]

Administrative Law – Public Service – Appointment of temporary officers pending approval of permanent scheme of service – Subsequent creation of permanent service – Temporary officers absorbed in permanent scheme of service – Application for declaration that action to transfer or absorb officers into permanent service was unlawful and unconstitutional or unfair – Whether there was reduction in rank – Whether officers ought to have given option – Whether there was unlawful delegation of powers – Federal Constitution, art. 132(2) & (3).

Constitutional Law – Public Service – Cabinet Committee on Establishment – Chain of Command – Federal Constitution, art. 132(2) & (3).

Sometime in 1972 the Ministry of Trade and Industry required the services of enforcement officers for the Ministry. Accordingly the Cabinet Committee on Establishment resolved on October 10, 1972, to authorise the Director-General of Public Services Department to establish and create a scheme of service for the officers on a temporary basis pending approval of a permanent scheme of service. Pursuant to this resolution a scheme of service was established provisionally consisting of:

(1) Enforcement Inspectors on a salary scale of $400 x 40 – $600; and

(2) Chief Enforcement Inspectors on a salary scale of $640 x 40 – $880.

This scheme of service was referred to by the judge in his judgment as the "*ad hoc* scheme of service." On December 2, 1974 the Director-General of Public Services Department then created and established a permanent scheme of service to replace the temporary or *ad hoc* scheme of service. The permanent scheme of service created two categories of posts and salaries as follows:

(1) Timescale Enforcement Inspectors, on a salary scale: $400 x 25 – 450/480 x 40 – 800/840 x 40 – 1000; and

(2) Enforcement Inspectors Special Grade, on a salary scale of $1000 x 50 – $1,250.

Apart from overall salary improvements the permanent scheme of service also changed the names of the posts in the provisional scheme from "Enforcement Inspectors" and "Chief Enforcement Inspectors" to "Timescale Enforcement Inspectors" and "Special Grade Enforcement Inspectors." The permanent scheme of service took effect from December 2, 1974, and has since been approved by the government.

Following the creation and establishment of the permanent scheme of service the Director-General of Public Services Department wrote to all the officers concerned to

inform them of the permanent scheme of service and that all the officers then serving would automatically thenceforth be governed by the permanent scheme of service. A sample of this letter is shown as "Exhibit BA-2A" attached to the affidavit of one Badrul bin Ahmad affirmed on November 27, 1980 – pg. 231. All the officers then serving as enforcement officers and chief enforcement officers were then absorbed into the permanent of service.

Subsequently nine officers among those affected took out an originating summons citing the Government of Malaysia, the Director-General of Public Services Department and the Chief Secretary of the Ministry of Trade and Industry as defendants. The third plaintiff withdrew his suit before the hearing in the High Court. They sought from the High Court, Kuala Lumpur, a declaration that the action of the defendants on May 23, 1975, to transfer or absorb the plaintiffs with effect from December 2, 1974, from the salary scheme for Chief Enforcement Inspector (Ketua Merinyu Penguatkuasa) *viz:* $640 x 40 – 720/760 x 40 – 880 to or into the new salary scheme for Timescale Enforcement Inspector (Merinyu Penguatkuasa Tingkatan Biasa) viz: $400 x 25 – 450/480 x 40/840 x 40 – 1,000, was unlawful and or unconstitutional or in any event unfair. They also sought an order that the plaintiffs be transferred or absorbed instead into the salary scheme for Special Grade Enforcement Inspectors (Merinyu Penguatkuasa Tingkatan Khas) *viz:* $1,000 x 50 – 1,250.

All the plaintiffs had been appointed from amongst serving officers in the public service. It would appear that the rest of the plaintiffs were appointed as Chief Enforcement Inspectors except the first plaintiff who was appointed as Enforcement Inspector in the provisional scheme of service. They were however appointed at different points in the salary scale depending on their salaries in their previous service.

The grievances of the appellants may be summarised as follows. The absorption process from the temporary scheme to the permanent service would in effect amount to a reduction in rank without giving them the opportunity to be heard and was therefore unconstitutional. Their argument was that by the absorption process those officers who were Chief Enforcement Inspectors in the temporary or provisional scheme of service were put together in the same scheme of service as the enforcement officers and therefore had the effect of reducing them in rank by placing them together with officers who were previously subordinate to them. Consequent upon being placed together with officers subordinate to them they were deprived of their normal legitimate prospect of promotion.

The learned trial judge concluded that in actual fact the appellants had not lost anything financially and in fact were put in a more advantageous position. However he said that the appellants ought to have given the option (a) to retire and be given pension on the abolition of their office; (b) to be transferred or absorbed into the new scheme of service or (c) to revert to their former appointments. He also said that the provisional or temporary scheme was void because the delegation by the Cabinet Committee on Establishment to the Director-General of Public Services Department was bad in law and unconstitutional. He therefore dismissed the claims of the appellants. The appellants appealed.

Held (1) the learned trial judge was correct in holding that in actual fact the appellants had not lost anything financially and they were in fact put in a more advantageous position. The complaint of the appellants that there had been a reduction in rank was also without merit;

(2) in this case there was no abolition of posts. It was made clear that the first scheme was provisional and temporary only pending the establishment of a permanent scheme of service. There was therefore only a change in the names of the posts and a restructure of the salary scales subsequently. The question of option therefore did not arise;

(3) there was no delegation in this case. The Cabinet Committee is nowadays normal in the machinery of government. The Public Services Department is an administrative department for the government charged with the responsibility for the affairs of the civil service. In this case delegation did not arise either from the Cabinet to the Cabinet Committee or from the Cabinet Committee to the Director-General of the Public Services Department. It was a mere chain of command.

Cases referred to:

(1) *Munusamy* v. *Public Services Commission* [1967] 1 M.L.J. 199.
(2) *Rabu bin Abdul Ghani* v. *P.S.D.M.* Public Service Tribunal Reference No. 1/78.
(3) *Metropolitan Borough and Town Clerk of Lewisham* v. *Roberts* [1949] 2 K.B. 608.
(4) *Carltona Ltd.* v. *Commissioners of Works & Ors.* [1943] 2 All E.R. 560.
(5) *Lewisham Borough* v. *Roberts* [1949] 2 K.B. 608.

SUPREME COURT.

Mohamed Nor bin Mohamed for the appellants.

Suriyadi bin Halim Omar (Senior Federal Counsel) (*K. Muniandy*, Federal Council, with him) for the respondents.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court): Sometime in 1972 the Ministry of Trade and Industry required the services of enforcement officers for the Ministry. Accordingly the Cabinet Committee on Establishment resolved on October 10, 1972 to authorise the Director-General of Public Services Department to establish and create a scheme of service for the officers on a temporary basis pending approval of a permanent scheme of service. Pursuant to this resolution a scheme of service was established provisionally consisting of –

(1) Enforcement Inspectors on a salary scale of $400 x 40 – $600; and

(2) Chief Enforcement Inspectors on a salary scale of $640 x 40 – $880.

This scheme of service was referred to by the judge in his judgment as the *"ad hoc* scheme of service." On December 2, 1974 the Director-General of Public Services Department then created and established a permanent scheme of service to replace the temporary or *"ad hoc"* scheme of service referred to earlier. The permanent scheme of service created two categories of posts and salaries as follows:

(1) Timescale Enforcement Inspectors, on a salary scale: $400 x 25 – 450/480 x 40 – 800/840 x 40 – 1000; and

(2) Enforcement Inspectors Special Grade, on a salary scale of $1000 x 50 – $1,250.

It should be noted immediately that apart from overall salary improvements the permanent scheme of service also changed the names of the posts in the provisional scheme from "Enforcement Inspectors" and "Chief Enforcement Inspectors" to "Timescale Enforcement Inspectors" and "Special Grade Enforcement Inspectors." The permanent scheme of service took effect from December 2, 1974 and has since been approved by the government.

Following the creation and establishment of the permanent scheme of service the Director-General of Public Services Department wrote to all the officers concerned to inform them of the permanent scheme of service and that all the officers then serving would automatically thenceforth be governed by the permanent scheme of service. A sample of this letter is shown as "Exhibit BA-2A" attached to the affidavit of one Badrul bin Ahmad affirmed on November 27, 1980 – pg. 231. All the officers then serving as enforcement officers and chief enforcement officers were then absorbed into the permanent scheme of service.

Subsequently nine officers among those affected took out an originating summons citing the Government of Malaysia, the Director-General of Public Services Department and the Chief Secretary of the Ministry of Trade and Industry as defendants. The third plaintiff withdrew his suit before the hearing in the High Court. They sought from the High Court, Kuala Lumpur, a declaration that the action of the defendants on May 23, 1975, to transfer or absorb the plaintiffs with effect from December 2, 1974, from the salary scheme for Chief Enforcement Inspector (Ketua Merinyu Penguatkuasa) *viz:* $640 x 40 – 720/760 x 40 – 880 to or into the new salary scheme for Timescale Enforcement Inspector (Merinyu Penguatkuasa Tingkatan Biaza) *viz:* $400 x 25 – 450/480 x 40/840 x 40 – 1,000, was unlawful and or unconstitutional or in any event unfair. They also sought for an order that the plaintiffs be transferred or absorbed instead into the salary scheme for Special Grade Enforcement Inspectors (Merinyu Penguatkuasa Tingkatan Khas) *viz:* $1,000 x 50 – 1,250.

All the plaintiffs had been appointed from amongst serving officers in the public service. It would appear that the rest of the plaintiffs were appointed as Chief Enforcement Inspectors except the first plaintiff who was appointed as Enforcement Inspector in the provisional scheme of service. They were, however, appointed at different points in the salary scale depending on their salaries in their previous service.

The grievances of the appellants may be summarised as follows. The absorption process from the temporary scheme to the permanent service would in effect amount to a reduction in rank without giving them the opportunity to be heard and therefore unconstitutional. Their argument was that by the absorption process those officers who were Chief Enforcement Inspectors in the temporary or provisional scheme of service were put together in the same scheme of service as the enforcement officers and therefore had the effect of reducing them in rank by placing them together with officers who were previously subordinate to them. Consequent upon being placed together with officers subordinate to them they were deprived of their normal legitimate prospect of promotion.

After carefully setting out the facts of the case the learned trial judge concluded that in actual fact the appellants had not lost anything financially as they were put on a salary scale carrying a higher maximum salary and also placed at a point in accordance with the dates of the first appointment. The learned judge said (at page 21) as follows:

> "As I had earlier stated the plaintiffs had not lost anything financially. They were put on a salary scale carrying a higher maximum salary. The dates of their seniority in service, were the dates of their first appointments as Chief Enforcement Inspectors as opposed to the other Enforcement Inspectors whose dates of seniority took effect on 2.12.1974. The plaintiffs' period of qualifying service for promotion to Special Grade Enforcement Inspectors were reduced by half."

We agree with the learned judge as we do not think that the facts can be interpreted in any other way.

The complaint of being reduced in rank has no merit. First, a reduction in rank means a reduction in the grade an officer is holding which is a form of penalty, a penalty in the sense that something beneficial to him is taken away. See also *Munusamy* v. *Public Services Commission.*[1] On the facts as alluded to earlier we do not agree that there is reduction in rank. In fact the facts of this case are very much similar to the Public Service Tribunal Reference No. 1/78 (*Encik Rabu bin Abdul Ghani* v. *P.S.D.M.*[2]). That case concerned an applicant to the Public Service Tribunal who had earlier been promoted as a storekeeper. Subsequently the government decided to regrade and restructure the salary scale of storekeepers. The applicant there contended that he should not have been "demoted" to a timescale post (the new post). The chairman of the Tribunal, Abdul Hamid J. (as he then was) said:

"Our answer to it is that there is no departure or deviation because the effect of the regrading and restructuring although it places the Applicant back into the Timescale nevertheless does not entail any loss in salary. In fact he enjoys a higher maximum. There is also no loss in seniority among themselves despite the loss in designation. As to the prospect of promotion we feel that there may be such reduction because the Applicant is placed on a larger and more competitive group but there is no loss in the opportunity to be promoted."

Secondly the allegation that the fact that the appellants were placed together with their previous subordinates would amount to reduction in rank is with respect misconceived and selfish. Since they have not lost financially nor in seniority nor in status the grievance is completely unjustified being directed solely to the presence of officers who were previously subordinate to them in the same scheme of service.

Finally, have they lost in terms of prospects of promotion? The facts show and the learned judge found that to qualify for promotion to the post of Enforcement Inspector Special Grade, the new scheme requires a Timescale Enforcement Inspector to serve at least six years as a Timescale Enforcement Inspector and to be confirmed in his post, and to pass the necessary examinations specified in the new scheme. We also take notice that the qualifying period of six years was in fact reduced in the case of the plaintiffs (*i.e.* those who were formerly Chief Enforcement Inspectors) to three years. For the plaintiffs, the dates of their seniority in service were to begin from the dates they were appointed as Chief Enforcement Inspectors, whereas for those who were Enforcement Inspectors in the *ad hoc* scheme of service, their seniority would begin from the date of the coming into force of the new scheme of service *i.e.* with effect from December 2, 1974. When the new permanent scheme of service came into force on December 2, 1974, the scheme of service for Special Grade Enforcement Inspectors were created, but no such post was made available to the Ministry of Trade and Industry until October 1, 1976 ("exhibit BA-3," paragraph 13.1, to the affidavit of Badrul bin Ahmad affirmed on November 27, 1980), when the Public Services Department and the Treasury approved the establishments of 12 posts of Special Grade Enforcement Inspectors. Upon the establishment and availability of these posts, the Promotion Board in the Ministry of Trade and Industry took immediate action to appoint all the 10 former Chief Enforcement Inspectors (including the plaintiffs) to act as Special Grade Enforcement Inspectors on November 1, 1977, and two of them who were confirmed as Enforcement Inspectors were paid acting allowances, while the rest who were not so confirmed were paid charge allowances. Thus it is no wonder that the learned judge concluded (pg. 22) that the plaintiffs were in fact put in a more advantageous position. He said:

"The plaintiffs, therefore, were put in a more advantageous position than the former Enforcement Inspectors when it came to chances of promotion to the Special Grade Enforcement Inspectors."

However, after finding that the appellants' claims had no merit the learned judge went at length on the question of option and delegation.

First, he said the appellants ought to have been given an option in the following alternatives. According to him they should have been offered to retire and be given pension upon the abolition of their posts. Alternatively he said they should be transferred to or absorbed directly into the new scheme of service which carried a higher maximum salary scale than that of Chief Enforcement Inspectors. The third alternative suggested was that the appellants ought to have been given the option to revert to their former appointments.

In our view the proposals of the learned judge on the question of option was the result of a misdirection on the facts. The point is there was no abolition of posts. It is made clear in the resolution of the Cabinet Committee on Establishment on October 10, 1972, that the first scheme was provisional and temporary only pending the establishment of a permanent scheme of service. The learned judge himself referred to the provisional scheme

as *"ad hoc"* scheme. There was therefore only a change in the names of the posts and a restructure of the salary scales subsequently. The question of option therefore does not arise.

As regards the question of delegation the learned judge again in our view misdirected himself. He dismissed the plaintiffs' claims because he held that the provisional or temporary scheme was void because the delegation by the Cabinet Committee on Establishment to the Director-General of Public Services Department was bad in law. He said in his judgment that the powers of the Yang di-Pertuan Agong under Article 132(2) of the Constitution cannot be delegated to the Director-General of the Public Services Department by law or administratively.

We have the opportunity of looking at the copy of the minutes of the Cabinet Committee on Establishment at its meeting on October 10, 1972 (Exhibit "SH01"). The Cabinet Committee consisted of the Prime Minister, the Deputy Prime Minister, the Minister of Finance and the Chief Secretary to the Government. The resolution reads in Bahasa Malaysia as follows:

> "(b) bersetuju, (sementara menantikan kelulusan skim perkhidmatan yang muktamad oleh pehak Kerajaan) memberi kuasa kepada Ketua Pengarah Perkhidmatan Awam Malaysia untuk meluluskan secara pertadbiran skim-skim perkhidmatan yang perlu diujudkan atau pun dipinda demi kepentingan urusan pengambilan atau pun kenaikan pangkat yang mustahak dijalankan dengan segera dan skim-skim perkhidmatan itu hendaklah dianggap sebagai skim sementara sahaja sehingga skim perkhidmatan yang muktamad diluluskan oleh Kerajaan kelak."

The operative words in the resolution are: "memberi kuasa kepada Ketua Pengarah Perkhidmatan Awam Malaysia." This actually means *to authorise* the Director-General of the Public Services Department to proceed with the creation and establishment of the temporary or provisional scheme of service pending the establishment of a permanent scheme of service for the enforcement officers required by the Ministry of Trade and Industry.

Where is the delegation? The Cabinet Committee system is nowadays normal in the machinery of government – see also *de Smith's* Constitutional and Administrative Law 5th Edition under "Executive Power." The Public Services Department is an administrative department of the government charged with the responsibility for the affairs of the civil service. The Assistant Director of the Public Services Department might have thought that it was a delegation as stated in his affidavit affirmed on April 8, 1985. But in our view delegation does not arise either from the Cabinet to the Cabinet Committee or from the Cabinet Committee to the Director-General of the Public Services Department. It is a mere chain of command.

In *Metropolitan Borough and Town Clerk of Lewisham* v. *Roberts*[3] Bucknill L.J. cited with approval the pronouncement of governmental system by Lord Greene in *Carltona, Ltd.* v. *Commissioners of Works and Others*[4] at page 563:

> "In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials."

In *Carltona* the sole question before the Court of Appeal related to the validity of the requisition order under the Defence (General) Regulations 1939. One of the questions posed was whether the requisition was bad because the persons constituting the requisitioning body (the Commissioner of Works) never brought their minds to bear on the question.

In *Lewisham Borough* v. *Roberts*[5] the court was concerned with a "re-requisition" order also under the same Defence Regulations but this time by the Ministry of Health. The Town Clerk applied to the Minister of Health to re-requisition the whole premises because the tenant of the ground floor refused access to the upper floor which had been requisitioned earlier. G, a general inspector of the Ministry of Health replied to the Town Clerk in an official letter of the Ministry stating that he was directed by the Minister to say that he delegated to the Town Clerk his functions under

the Regulations for the purpose of requisitioning the whole premises. There was no evidence that the Minister had personally instructed G to act on a matter of this kind. By virtue of section 7 of the Emergency Powers (Defence) Act 1939 a document must be deemed to have been made or issued by the Minister of Health until the contrary was proved. It was held that since the contrary was not proved and *since the Minister was entitled to act by an authorised official of his department* and there was no necessity that it should be shown that the Minister had given his mind to the matter personally, *no question of delegation arose* as between the Minister and G so that the maxim, *delegatus non potest delegare*, did not arise. (Emphasis provided).

By virtue of Article 132(2) of the Federal Constitution the conditions of service of persons in the federal public services may be regulated by federal law and subject to the provisions of any such law by the Yang di-Pertuan Agong. In this regard we are in the same situation as described by Denning L.J. (as he then was) in *Lewisham Borough* v. *Roberts* where he said in regard to the power of requisition

"It is a power which Parliament has conferred on the Crown, that is to say, on the Executive acting by the government departments."

We accordingly dismiss the appeal for reasons quite different from that of the learned judge. Costs to respondents. Deposit to respondents towards payment of costs.

Appeal dismissed.

Solicitors: *Wong-Chooi & Mohd. Nor.*

MALAYAN INSURANCE (M) SDN. BHD. v. ASIA HOTEL SDN. BHD.

[S.C. (Seah, Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) October 28, 29 & December 18, 1986]

[Johor Bahru – Supreme Court Civil Appeal No. 221 of 1986]

Practice and Procedure – Claim on insurance policy – Defence of misrepresentation or non-disclosure of material facts in proposal for insurance – Application for summary judgment – Trial judge finding no merit on triable issues in the defence – Judge deciding on sole question of law – Whether relevant facts agreed on – Interlocutory judgment granted – Appeal allowed – R.H.C. 1980, O.14 & O.33 r.2.

In this case the respondents had taken out fire insurance policies and claimed for the loss resulting from a fire which severely damaged their premises. The defence denied liability and put in issue the terms and conditions contained in the policies. They also raised the issue of misrepresentation and non-disclosure or concealment of material facts. The learned judge held that the only dispute in this case was non-disclosure of material facts by the respondent on the proposal for insurance, and he determined what he thought was the sole question of law before granting summary judgment. He concluded that there was no merit or triable issue in the defence and granted interlocutory judgment. There was nothing in the record to show whether the parties in this case had agreed on all the relevant facts.

Held: (1) the Courts hearing an Order 14 application should work within the framework of Order 14 and not embark on an exercise under Order 33 rule 2 which empowers the court to determine any question or issue arising in a cause or matter whether of fact or law or partly of fact or partly of law before the trial of the cause or matter;

(2) where the issue raised is solely a question of law pure and simple without reference to any facts or where the facts are clear and undisputed the court should exercise its duty under Order 14 as in any other cases and decide on the question of law. This is so even if the issue of law raised is a difficult one. If the court after considering the argument is satisfied that it is really unarguable then the court should grant summary judgment;

(3) in this case the issues raised in the statement of defence are factors making the case not an appropriate one for summary judgment;

(4) the underlying philosophy in the Order 14 provision is to prevent a plaintiff clearly entitled to the money from being delayed his judgment where there is no fairly arguable defence to the claim. The provision should only be applied to cases where there is no reasonable doubt that the plaintiff is entitled to judgment. Order 14 is not intended to shut out a defendant. The jurisdiction should only be exercised in very clear cases.

Cases referred to:

(1) *National Company for Foreign Trade* v. *Kayu Raya Sdn. Bhd.* [1984] 2 M.L.J. 300.

(2) *European Asian Bank* v. *Punjab and Sind Bank* [1983] 2 All E.R. 508, 516.

(3) *Cow* v. *Casey* [1949] 1 All E.R. 197.

SUPREME COURT.

Khoo Eng Chin for the appellants.
Zainal Azim for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court): This is an appeal against the order of the judge under Order 14 of the Rules of the High Court. The judge in his grounds of judgment determined what he thought was the sole question of law before granting summary judgment. He said (at page 11) that the only dispute was non-disclosure of material facts by the plain-